IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3709 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T CORPN - Petitioner(s)

Versus

MEGHJIBHAI D SOLANKI - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/10/2005

ORAL JUDGMENT

1. In the present petition, S.T.Corporation has challenged the legality of an award passed by the Industrial Tribunal. By the impugned award Industrial Tribunal was pleased to set aside two separate orders of

punishment imposed on the respondent. Respondent was working as a driver. For an accident which occurred on 28th September, 1985 in which a boy aged 14 expired, a departmental inquiry was conducted against the respondent. The disciplinary authority imposed punishment of withholding of four increments with future effect. This punishment was reduced eventually by the second appellate authority by providing withholding of two increments with future effect from the pay of the respondent.

1.1 Industrial Tribunal set aside the penalty on the ground that there was evidence to prove the charges. It was the case of the respondent that he was trying to over take a camel cart when suddenly the boy tried to cross the road and was hit by the bus. The Industrial Tribunal ought to have been appreciated that accident was caused for which there was no explanation and principle of *res ipsa locutari* ought to have applied. The respondent had so much as admitted that he was trying to over take a camel cart. It was excepted that he should have over taken in such a way that no one is hurt in the process. If he had driven the bus with care and reduced speed, a human life could have been saved. Industrial Tribunal

erred in setting aside the penalty imposed by the petitioner. To that extent the award is required to be quashed.

2. Second aspect of the award was with respect to an accident caused by the respondent on 24/5/1987 when his bus hit a matador. For this accident punishment of withholding to one increment with future effect was imposed on the respondent. This punishment was also set aside by the Industrial Tribunal. Industrial Tribunal believed that the matador had suddenly applied breaks due to which a minor impact was caused. Nothing has been brought on record to suggest that the impact was serious or that the damage to the S.T. Bus was substantial. In that view of the matter no interference is called for. In this aspect of the matter, the award of the Industrial Tribunal is, therefore upheld to that extent.

3. In the result petition is allowed in part. Award of the Industrial Tribunal in so far as the same sets aside, the punishment of withholding of two increment with future effect is quashed. Said punishment is restored. Rest of the award is maintained. If any benefits of the respondent are withheld, the same shall be released

expeditiously after applying this order. Rule is made absolute to the limited extent. No order as to costs.

(Akil Kureshi, J.)

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